

## TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	i
INTRODUCTION	1
I. PEG CHANNELS MUST BE PLACED ON LOWEST SERVICE TIER	3
A. Cable and video service providers are circumventing Federal law.	3
B. PEG channel regulation in the Florida Cities.	4
C. PEG channel relocation discriminates based on economic status.	5
D. Taxpayers deserve the right to easy access PEG programming.	6
II. PEG CHANNEL PROGRAMMING PROVIDES A CRUCIAL MEDIUM OF COMMUNICATION AND COMMUNITY INFORMATION TO RESIDENTS	7
A. The importance of PEG programming in the Florida Cities.	7
B. Public safety and health concerns.	9
III. THE COMMISSION SHOULD GRANT THE PETITIONS REGARDING AT&T'S PEG PRODUCT AND COMCAST'S PEG DIGITAL CHANNEL SLAMMING	10
A. Channel Slamming	10
B. Inferior PEG Products and Broadcasts	10
CONCLUSION	11

## SUMMARY

The Florida Cities strongly urge the Commission to grant petitions filed by the Alliance for Community Media, the City of Lansing, Michigan and the City of Dearborn, Michigan requiring public, educational and governmental ("PEG") access channel broadcasts in compliance with the Communications Act. PEG channels are a critical and irreplaceable resource for the Florida Cities. They serve as an important resource for the Florida Cities to connect with their communities in the manner intended by Congress. Maintaining PEG channels in a technical format readily accessible to the general public is clearly in the best interests of the citizens of the Florida Cities and communities nationwide.

Cable and video service providers have attempted to draft state franchising laws to reclassify basic service tiers for the elimination of the lifeline tier and confuse subscribers with federal guidelines to eradicate PEG programming. Requiring residents to purchase a converter box or subscribe to a costly service package in order to view PEG channels discriminates against subscribers that are losing their jobs and facing unemployment. PEG programming serves as a means for the Florida Cities to inform the public about community sponsored events, elected official actions, preparation for and recovery from weather disasters, essentially affecting how their tax dollars are spent. Channel slamming by the cable and video service industry eliminates a subscriber's ability to observe and benefit from programs that are financially supported by the subscriber's tax dollars.

The Florida Cities strongly oppose any efforts by the cable and video services industry to minimize access to PEG channels and the invaluable programming they provide. Accordingly, the Florida Cities strongly urge the Commission to grant all three petitions to prevent the PEG digitalization and channel slamming experienced by the petitioners.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of	)	
	)	
Petition for Declaratory Ruling Regarding Public	)	
Educational and Governmental Access Channels	)	MB Docket No. 09-13
CSR-8126, CSR-8127 and CSR 8128	)	

**COMMENTS SUBMITTED BY CERTAIN FLORIDA MUNICIPALITIES**

**Introduction.**

These Comments are filed on behalf of the following Florida municipalities: Village of Bal Harbour, Town of Bay Harbor Islands, City of Cooper City, City of Hollywood, City of Homestead, City of Miramar, and the City of Weston (hereinafter referred to collectively as "Florida Cities") to urge the Federal Communications Commission ("Commission") to grant petitions filed by the Alliance for Community Media, the City of Lansing, Michigan and the City of Dearborn, Michigan (collectively referred to herein as the "Three Petitioners") requiring public, educational and governmental ("PEG") access channel broadcasts to comply with the provisions of the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.* (the "Communications Act").

The Florida Cities contend that the difficulties created by the AT&T channel platform and Comcast's relocation of PEG channels (which other providers have also done in Florida) violate federal law, and make it more burdensome and/or expensive for subscribers to access and view PEG programming in the manner intended by Congress. As referenced by the Three Petitioners, Comcast and AT&T have made it difficult to find local government access channel programming by moving channels to higher services tiers or forcing customers to rent a converter box to view them. Placement of PEG access channels on the lowest service tier

available may ensure their availability to all subscribers, which eliminates the practice referred to as "channel slamming," the placement of access channels on a tier of service that requires a converter for viewing. Thousands of residents in the Florida Cities receive cable or video services that currently do not require a converter. By moving an access channel to a higher digital tier, service providers would essentially be cutting these residents off from the very access that Congress intended when they created access channels. Under this scenario, only the financially "fortunate" residents/subscribers will be able to watch their local government in action.

In the Florida Cities, PEG channels provide local residents with programming that is unique and specific to the communities they live in. PEG channels serve an essential role as a link between residents and their local communities and governments. The importance of PEG channel accessibility is increasing due to the current media climate that has dramatically shifted in favor of a focus on national and regional interests. Moreover, due to the economic environment and technology advances, local newspapers are closing their doors across the country and local programming stations are providing more entertainment programming at the expense of local and national news coverage. Given this shift of content, maintaining PEG channels in a technical format readily accessible to the general public is clearly in the best interests of the citizens and residents the Florida Cities and communities nationwide.

The Florida Cities support the petitions filed by the Three Petitioners, FLATOA and NATOA, and strongly oppose any FCC ruling or action that limits community access to PEG channels. Rather than repeat every legal argument included in the petitions, we file to explain PEG's role in the Florida Cities, and why it is crucial to prevent operators from inhibiting access to these channels.

## **I. PEG CHANNELS MUST BE PLACED ON LOWEST SERVICE TIER.**

### **A. Cable and video service providers are circumventing Federal law.**

PEG programming must be provided on the basis service tier in accordance with federal law. Congress viewed PEG access channels as "the video equivalent of the speaker's soapbox,"<sup>1</sup> to satisfy local needs and interests of the community including the rules, procedures, and method of administration for such channels.<sup>2</sup> Section 623 of the Communications Act, 47 U.S.C. § 543, addressed Congress's concerns that basic service tier channels be accessible to everyone. It provides that every cable operator must "provide it's subscribers a separately available basic service tier" which contains, at a minimum, any PEG programming "required by the franchise of the cable system to be provided to subscribers."<sup>3</sup> A tier is defined in the Communications Act as "a category of cable services or other services provided by a cable operator and for which a separate rate is charged by the cable operator."<sup>4</sup> However, cable operators have attempted to circumvent federal law, by classifying a basic service tier, which usually consists of 20-25 channels, as an "enhanced" or "expanded" basic tier that normally consists of 70-80 channels, thus, eliminating the distinction of the lifeline basic tier.

Recently adopted Florida Law, which was supported by the cable and telephone industry, specifically provides that, "a cable or video service provider may locate any public, educational, or governmental access channel *on its lowest digital tier of service* offered to the provider's subscribers."<sup>5</sup> This language was proposed by the cable and video industry partly to confuse subscribers with the Digital Television ("DTV") transition set to take place later this year. The relocation of PEG channels to the digital tier by cable and video providers, which requires the

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<sup>1</sup> HOUSE REPORT, supra, note 30, at 30, reprinted in 1984 U.S.C.C.A.N. at 4667.

<sup>2</sup> Copple, supra note 26, at 150.

<sup>3</sup> 47 U.S.C. § 543(b)(7)(A)

<sup>4</sup> 47 U.S.C. § 522 (17).

<sup>5</sup> See Section 610.109(6), Florida Statutes

rental of additional equipment, is strictly a business decision to reallocate existing bandwidth to generate revenue and is clearly not related to the DTV transition for local broadcasters. To further complicate the matter, some cable operators have informed local regulators and customers in the Florida Cities that the digitalization of PEG channels was due to the DTV transition. To achieve the goals set forth by Congress, PEG channels must be placed on the lowest tier of service available to consumers without the need for additional equipment or services as argued by the Three Petitioners.

**B. PEG channel regulation in the Florida Cities.**

Cable and video service providers are using state franchising laws to eliminate PEG programming. While the Communications Act permits local governments to establish requirements in a cable franchise for the designation or use of channel capacity for PEG<sup>6</sup>, the Florida Legislature, along with other state governments, eliminated the local government authority to negotiate a franchise to require PEG channels. Under Florida's "Consumer Choice Act of 2007," ("Act"), effective July 1, 2007, local governments can no longer grant cable franchises, or require operators to enter into cable franchise agreements. An entity or person seeking to provide cable or video services, including incumbent cable operators, may file for a certificate of franchise authority with the Florida Department of State. Once an incumbent cable service provider is issued a certificate of franchise authority, it is considered a "certificateholder" and its applicable municipal or county franchise is terminated. An incumbent cable service provider can apply for and receive a certificate that covers only a portion of a county or municipality and leave an existing franchise in place until its natural expiration date.

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<sup>6</sup> 47 U.S.C. § 531

Under the Act:

- A certificateholder<sup>7</sup>, not later than 180 days following a request by a municipality or county within whose jurisdiction the certificateholder is providing cable or video service, shall designate a sufficient amount of capacity on its network to allow the provision of public, educational, and governmental access channels for noncommercial programming;
- The local government must use the access channel at least 10 hours per day on average, of which 5 hours must be non-repeat programming, measured on a quarterly basis, or risk reprogramming at the cable operator's discretion; and
- If the local government does not meet the above usage criteria, the cable operators will provide written notice to the local government. The local government will have 3 months (a quarter) to increase usage of the channel.

Further, if a cable or video service provider desires to relocate a PEG channel, the service provider "must notify its customers and the applicable municipality or county at least 120 days prior to relocating the applicable educational or governmental access channel."<sup>8</sup> It is apparent that thru adoption of the above mentioned state franchising law, cable and video service providers attempted to eviscerate PEG channel programming which the Commission must protect. PEG channels are intended to be available to all persons who receive cable and video service, without restrictions, impediments or diminution in quality because of the important role they play in providing a forum for local voices.

**C. PEG channel relocation discriminates based on economic status.**

According to Congress, PEG channels "provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at

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<sup>7</sup> Prior to July 1, 2007, cable or video service providers in Florida operated under a franchise agreement with the local governments. Due to a change in Florida law, effective July 1, 2007, cable or video service providers in Florida operate under a certificate of authority issued by the state and are no longer required to enter into a franchise agreement with local governments.

<sup>8</sup> See Section 610.109(6), Florida Statutes

work.”<sup>9</sup> Requiring residents to purchase a converter box or subscribe to a costly service package in order to view PEG channels effectively discriminates against an increasing segment of the public that cannot afford to do so. As of March 6, 2009, Florida’s unemployment rate has reached 8.6% and rising.<sup>10</sup> Our country faces 8.1 % unemployment and rising.<sup>11</sup> Unfortunately, these numbers do not reflect the additional 651,000 jobs the country lost in the month of February.<sup>12</sup> In Broward County alone, unemployment has nearly doubled in one year, from 4.2% in 2008 to 7.7% in 2009.<sup>13</sup> Consequently, the general public’s capacity to spend on discretionary products, such as premium cable packages, receivers and conversion boxes, has dropped dramatically due to significantly reduced income and wealth. The Florida Cities believe financial impediments to PEG channel access are unacceptable, particularly at a time when our residents are losing their jobs and investments and facing increased health care and educational costs.

**D. Taxpayers deserve the right to easy access to PEG programming.**

In addition to many other important public purposes, PEG programming serves as a means for local governments to educate and inform the public about community sponsored local events and elected official action affecting the expenditure of their tax dollars. For example, the Florida Cities utilize PEG channels to broadcast their local council meetings live and publicize community sponsored events, both funded with tax dollars. Consequently, residents watching the meetings or watching information on community sponsored events, get direct information on the expenditure of their taxpayer dollars without editorial control or media bias. The Florida Cities view such access as a fundamental right of their citizens that should not be affected by economic

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<sup>9</sup> H.R. Rep. No 98-934, 98th Cong., 2nd Sess. at 30 (1984) (“H.R. Rep. 98-934”)

<sup>10</sup> Florida Agency for Workforce Innovation, Labor Market Statistics Center, Current Employment Statistics Program, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics. Prepared March, 2009

<sup>11</sup> U.S. Department of Labor, Bureau of Labor Statistics. Prepared March, 2009

<sup>12</sup> U.S. Department of Labor, Bureau of Labor Statistics. February Jobless Report, Prepared March, 2009

<sup>13</sup> *Id.*



standing or the particular platform used by cable and video service providers servicing their area. Moreover, local governments provide PEG programming to the community utilizing taxpayer funds. Residents have the right to benefit from the very programs that they help pay for. Allowing cable or video service providers to curtail that right by creating burdens to access, whether by requiring additional costs for service, relocating PEG channels, or broadcasting inferior quality, is unconscionable and must be prohibited.

## **II. PEG CHANNEL PROGRAMMING PROVIDES A CRUCIAL MEDIUM OF COMMUNICATION AND COMMUNITY INFORMATION TO RESIDENTS.**

### **A. The importance of PEG programming in the Florida Cities.**

While the Florida Cities may differ from the demographics and industrial framework of communities in Lansing and Dearborn, Michigan (collectively referred to herein as the “Michigan Cities”), they share a number of characteristics regarding the provision of cable and video programming services in their communities. The Florida Cities and Michigan Cities utilize PEG access channels to communicate with the citizens regarding public meetings, public events, advisories and preparations for emergency purposes. Despite direct broadcast service (“DBS”) services that fail to broadcast PEG channels and have limited viewership in the Florida Cities due to the physical limitations that prevent subscribers that reside in multiple dwelling units from obtaining service,<sup>14</sup> residents of Florida Cities and Michigan Cities have a limited choice of cable and video programming service providers. For example, there are only three (3) cable or video programming providers that currently service areas within the seven Florida Cities filing this petition, and not one of them has access to more than one cable or video service provider.<sup>15</sup>

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<sup>14</sup> To receive DBS service, the subscriber must aim their satellite receiver or dish at the satellite location in the sky, which for both DirecTV and DISH satellites requires a southern or southwestern exposure. See FCC Fact Sheet Concerning Over-the-Air Reception Devices Rule ([www.fcc.gov/mb/facts/otard.html](http://www.fcc.gov/mb/facts/otard.html)).

<sup>15</sup> Weston has approximately 61,500 residents; however, 14,639 single family homes and 368 multifamily residential homes are subject to a bulk billing cable contract with Advanced Cable until its expiration in 2013. Although

Several of the Florida Cities, along with many Florida local governments, pursuant to expired or terminated cable franchise agreements, obtained access channels that they manage and utilize for government and educational programming based on their individual communities' needs and interests. The Florida Cities utilize their PEG channels to disseminate programming to better serve and interact with their constituents, such as: video coverage of local commission or council meetings, planning and zoning board meetings, mayor and/or councilmember forums, information about government services, local law enforcement's most wanted, school closings or classroom instruction, police and fire safety programs, hurricane preparedness and recovery information, educational programming and career fairs, civic and cultural events; local school sports events or music competitions, political debates, ethnic programming, and local issue discussions. This programming provides residents with an opportunity to partake in community events and watch their government in action, which they cannot obtain elsewhere.<sup>16</sup>

Florida Cities also use PEG programming to provide information regarding Federal and State aid. Given the current economic and housing crisis and the corresponding government intervention, many of the Florida Cities plan to use their PEG channels to inform residents regarding the availability of government programs that provide needed financial assistance, mortgage assistance and tax relief. Accordingly, these PEG channels are a critical and irreplaceable resource for the citizens of the Florida Cities.

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Comcast provides services to some homes in Weston, it has not overbuilt the Advanced Cable portion of the City causing limited choices for cable services.

<sup>16</sup> The City of Miramar, which has approximately 112,000 residents and 37,000 households, provides programming on its government access channels including, but not limited to: Interviews of commission members; Video of Calvo Art Piece in Regional Library; Miramar/Pembroke Pines Chamber of Commerce Candidates' Forum; Adkins Promotional Video of Miramar; Allison Sky art piece video; American in the Arts commercial; Public Works Video on city canals; Cultural Arts Center promotional video; Diabetes Music Video; AIDS commercial; Drowning Prevention Video by Miramar FD; Whispering Pines School Visit to Miramar; and Multi-Service Grand Opening. These are re-played 3-4 times daily.

## **B. Public safety and health concerns.**

Like the Michigan Cities that are exposed to snow and wind storms, the Florida Cities frequently experience weather conditions that endanger their residents and property. The Florida Cities and many other local governments in coastal regions are constantly threatened by hurricanes, windstorms, thunderstorms, floods, and tornadoes. As a matter of public safety and health, it is critical that the Florida Cities are able to communicate with their residents on a localized PEG programming platform. Dating back to the obliteration of the City of Homestead by Hurricane Andrew in 1992, several of the Florida Cities had the unique misfortune of being hit by multiple hurricanes that caused significant damage and destruction. In 2004, Hurricanes Charley, Frances, Ivan and Jeanne caused substantial damage to Florida homes. Additionally, in 2005, many Floridians were without power for more than a month in the aftermath of Hurricanes Katrina, Rita and Wilma. Floridians have suffered through torrential rain storms, sustained windspeeds in excess of 150 mph, and temporary relocation for residents residing in mandatory evacuation areas. Given the Florida Cities' extensive experience addressing severe weather conditions, their administrators have developed comprehensive actions plans that incorporate the use of PEG channels. The availability of PEG programming on the lowest tier is essential for disaster preparation and restoration efforts. It is important that the Florida Cities maintain their ability to inform the public regarding appropriate preparation and response plans for hurricanes or tropical storms. Only a local government has the local knowledge, resources and ability to facilitate effective disaster preparation, emergency services, and restoration efforts for the safety and welfare of all residents, not only those wealthy enough to purchase higher tiers of cable and video services.

If the Commission allows cable and video service providers to eliminate access to PEG channels by channel slamming or use of platforms markedly inferior to broadcast channels, such action may have the unintended consequence of thwarting local government's front-line responsibility to residents by negatively affecting preparation for and recovery from weather disasters impacting the Florida Cities.

### **III. THE COMMISSION SHOULD GRANT THE PETITIONS REGARDING AT&T'S PEG PRODUCT AND COMCAST'S PEG DIGITAL CHANNEL SLAMMING**

#### **A. Channel Slamming**

The Florida Cities support the city of Dearborn's assertion that Comcast's proposed treatment of PEG violates the Communications Act by impermissibly removing PEG channels from the basic service tier. Although Comcast has not yet implemented a PEG digitization channel slamming practice in the Florida Cities, it is anticipated that Comcast will do the same in their communities. In the event the Commission fails to agree with Dearborn's petition, there is every reason to assert that Comcast, Advanced Cable, Atlantic Broadband, and AT&T will digitize the Florida Cities' PEG channels. The Florida Cities urge the Commission to take action to ensure that digitization does not have the negative impacts on PEG programming as outlined by the Three Petitioners and these comments.

#### **B. Inferior PEG Products and Broadcasts**

The Florida Cities are located in Miami-Dade and Broward Counties, one of the first markets in the state to receive the AT&T "U-verse" system.<sup>17</sup> Customers can currently order AT&T U-verse services in parts of dozens of communities in Miami-Dade and Broward and counties and "AT&T will make U-verse services available to more homes throughout South

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<sup>17</sup> See AT&T press release "AT&T U-verse arrives in South Florida" dated July 21, 2008

Florida on an ongoing basis.”<sup>18</sup> Comcast currently provides service in five of the seven Florida Cities, including Cooper City, City of Hollywood, City of Homestead, City of Miramar, and the City of Weston. The Florida Cities are concerned about the problems created by the AT&T channel platform and Comcast’s selective digitization of PEG channels and the use of their editorial control that makes it more difficult or expensive for program producers to use, and for subscribers to access and watch, PEG programming. Specifically, the areas of concern are ease of finding in the menu system, ease of access, the time it takes to reach the PEG programming, the ability to switch back and forth between local PEG programming and other channels, ability to record using DVR, closed captioning capability, and secondary audio (“SAP”) capability. In virtually every conceivable way that matters to a viewer, the AT&T PEG product is inferior to broadcast channels carried on AT&T’s U-verse system.

While the Florida Cities have not yet experienced the problems caused by PEG digitization or by the Channel 99 platform, if the Commission were to permit the actions of AT&T and Comcast at issue in this proceeding, the operators serving our communities would likely adopt the aforementioned approaches that marginalize or effectively eliminate PEG access.

### **Conclusion.**

PEG channels are a critical and irreplaceable resource for the Florida Cities. They serve as a critical role in local governments’ ability to communicate with residents, and to watch and participate in a dialogue about their local community. In light of the decreasing amount of local programming on broadcast and other commercial channels, PEG is the only full-time, authentic local source of television programming available to residents in the Florida Cities. The Florida Cities strongly oppose any efforts by the cable and video programming service providers to

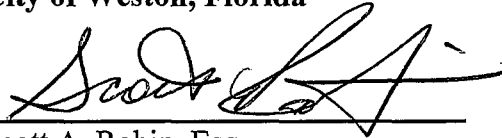
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<sup>18</sup> *Id.*

minimize access to PEG channels. Accordingly, the Florida Cities strongly urge the Commission to grant all three petitions and take any action necessary to protect the accessibility and quality of PEG programming.

Respectfully submitted,

**Village of Bal Harbour, Florida  
Town of Bay Harbor Islands, Florida  
City of Cooper City, Florida  
City of Hollywood, Florida  
City of Homestead, Florida  
City of Miramar, Florida  
City of Weston, Florida**



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